

355.9-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

- (1) Except as otherwise provided in subsection (2) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:
 - (a) Would impair the creation, attachment, or perfection of a security interest; or
 - (b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.
- (2) Subsection (1) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under KRS 355.9-610 or an acceptance of collateral under KRS 355.9-620.
- (3) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:
 - (a) Would impair the creation, attachment, or perfection of a security interest; or
 - (b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.
- (4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (3) of this section would be effective under law other than this article but is ineffective under subsection (1) or (3) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:
 - (a) Is not enforceable against the person obligated on the promissory note or the account debtor;
 - (b) Does not impose a duty or obligation on the person obligated on the

- promissory note or the account debtor;
- (c) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
 - (d) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;
 - (e) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
 - (f) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.
- (5) This section prevails over any inconsistent provisions of the following statutes and any administrative regulations based on those statutes: KRS 56.230(2), 138.320(3), 138.665(4), 138.720(5), 139.250, 154A.400(3), 190.047(1), 190.070(2)(c), 217B.535(2), 228.070(2), 230.300(11), 234.330(10), 243.630(2), 260.815, 286.4-460(2), 292.320(2)(b), 286.8-036(2), 304.3-410(2)(f), 304.3-520(5), 333.080, 350.135(1), 365.430(27), and 286.9-070(2).
- (6) Subsection (3) of this section does not apply to the following statutes and to administrative regulations promulgated under the authority of those statutes: KRS 304.2-260, KRS 304.24-420, Subtitle 33 of KRS Chapter 304, and Subtitle 37 of KRS Chapter 304.

Effective: July 1, 2013

History: Amended 2012 Ky. Acts ch. 132, sec. 77, effective July 1, 2013. -- Amended 2009 Ky. Acts ch. 80, sec. 11, effective June 25, 2009. -- Amended 2002 Ky. Acts ch. 31, sec. 1, effective July 15, 2002. -- Repealed and reenacted 2001 Ky. Acts ch. 119, sec. 13, effective July 1, 2001. -- Created 2000 Ky. Acts ch. 408, sec. 90, effective July 1, 2001.

Legislative Research Commission Note (7/15/2016). Under the authority of KRS 7.136(1)(e), a reference to "KRS 286.8-036(3)" in subsection (5) of this statute has been changed to "KRS 286.8-036(2)" by the Reviser of Statutes following the enactment of 2016 Ky. Acts ch. 129, sec. 11, which deleted subsection (2) of KRS 286.8-036 and renumbered the subsequent subsections, but did not amend this statute to conform.

Legislative Research Commission Note (3/14/2013). 2013 Ky. Acts ch. 10, secs. 2 and 3 provide that the statutes in Article 9 of the Uniform Commercial Code that were amended or created in 2012 Ky. Acts ch. 132, secs. 60 to 99, are effective July 1, 2013. This statute was one of those sections. Since only the effective date of a prior Act was altered, and not the text of the affected statutes, reference to 2013 Ky. Acts ch. 10 does not appear in the history for this statute.

Legislative Research Commission Note (7/12/2012). In 2010, the National Conference of Commissioners on Uniform State Laws and the American Law Institute proposed a Uniform Act for adoption by the states that contained revisions to Article 9 of the Uniform Commercial Code. The effective date for all proposed Article 9 revisions

was to be July 1, 2013. Those revisions were enacted in 2012 Ky. Acts Chapter 132, Sections 60 to 99. Sections 60 to 90 contained the substantive Article 9 revisions, and Sections 91 to 99 contained the transitional Article 9 revisions created to handle secured transactions made prior to July 1, 2013. Section 91 of that Act (codified as KRS 355.9-801) and Section 102 of that Act (a noncodified effective date provision) both stated, "Sections 91 to 99 of this Act take effect July 1, 2013." The normal effective date for legislation enacted at the 2012 Regular Session of the General Assembly is July 12, 2012. In Opinion of the Attorney General 12-010, issued July 3, 2012, Section 91 (codified as KRS 355.9-801) was determined to have contained a manifest clerical error, and should have instead read, "Sections 60 to 90 of this Act take effect July 1, 2013," thereby making the substantive Article 9 revisions effective on the same date as the transitional Article 9 provisions in conformity with the 2010 Uniform Act proposal and 2012 Ky. Acts Chapter 132, Section 102. This statute was one of the substantive provisions of Article 9 contained in 2012 Ky. Acts Chapter 132, Sections 60 to 90.

Legislative Research Commission Note (7/12/2006). 2006 Ky. Acts ch. 247 instructs the Reviser of Statutes to adjust KRS references throughout the statutes to conform with the 2006 renumbering of the Financial Services Code, KRS Chapter 286. Such an adjustment has been made in this statute.